STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company	)	
	)	
	)	
Approval of the On-Bill Financing Program	)	Docket No. 10-0091
pursuant to Section 16-111.7	)	
of the Public Utilities Act	)	

APPLICATION FOR REHEARING OF
THE PEOPLE OF THE STATE OF ILLINOIS

INTRODUCTION

The People of the State of Illinois ("the People" or "AG"), through Attorney General Lisa Madigan, respectfully request rehearing, pursuant to ILCS 5-10/113 and 83 Ill. Admin Code Part 200.880, in Docket 10-0091, with respect to the Illinois Commerce Commission ("ICC" or "Commission") issuing a Final Order ("Order") entered on June 2, 2010 and served to the parties to this docket on June 3, 2010. The subject Application for Rehearing concerns the Commission's failure to exercise proper oversight to assure the costs that ComEd will incur under their On-Bill Financing Program ("Program") and pass on to ratepayers are prudent. For all the reasons stated, the People seek rehearing.

1. **The Order's Failure to Compel Commonwealth Edison to Supply Sample Contracts Prior to Granting Approval of Their Program, as required by Section 16-111.7(d)(4) of the Public Utilities Act, is a Violation of that Statute and Reversible Error on Appeal.**

The General Assembly has authorized the Commission to approve on-bill financing programs proposed by electric utilities provided that such programs meet the criteria set forth in Section 16-111.7(d). That provision states, in relevant part, that:

> A program approved by the Commission shall also include the following criteria and guidelines for such program…
> (4) sample contracts and agreements necessary to implement the measures and program ;…

Rather than require ComEd to provide sample contracts and agreements needed for program implementation, however, the Commission has elected to approve ComEd's program proposal without having reviewed the contracts and agreements as the law requires. The contracts and agreements that the law requires the Commission to approve describe the terms and conditions that lenders providing financing and vendors selling qualifying energy efficiency measures must agree to in order to participate in the program.

By failing to review sample contracts and related agreements, the Commission has elected to approve ComEd's proposal without exercising its duty to ensure that the costs the utilities and ratepayers will incur are prudent, and that the terms of the contracts are reasonable. Instead, the Commission has chosen to leave the establishment of certain program costs entirely to the lenders themselves without any guidance, understanding that any and all program costs will have to be absorbed by ratepayers.

The fact that the ICC has no jurisdiction over lenders and the fees they will charge makes the Commission's regulation of utility actions with respect to the on-bill financing programs all the more critical to protecting ratepayers. Unless the Commission provides the utilities with specific guidance regarding what constitutes reasonable contract terms and fees, it will have abdicated its responsibility to establish guidelines for reasonable and prudent contract terms.

The People hereby incorporate all the arguments provided in their pleadings on this issue. AG BOE at 8-10. The Commission's failure to compel Commonwealth Edison to supply sample contracts prior to granting approval of its OBF program, as

required by Section 16-111.7(d)(4) of the Public Utilities Act, is a violation of that statute and constitutes reversible error on appeal 220 ILCS 5/10-201(e)(iv)(C). The Commission should grant rehearing to compel the production of sample contracts for the Commission's review and approval consistent with Section 16-111.7(d)(4) and with its duties to set just and reasonable rates under the Public Utilities Act.

2. The Final Order Lacks the Legally Requisite Findings on the Prudence of the Terms and Conditions Contained in the Contracts ComEd will Enter into with Program Lenders.

Without having reviewed any sample contracts that ComEd would propose to use to finalize their agreements with program lenders, the Commission failed to exercise the oversight required by the General Assembly when it directed the Commission to regulate the implementation of On-Bill Financing Programs. The Commission should direct utilities to prepare contracts designed to limit program costs in order to ensure that those costs meet the prudence standard. Given that payments made by the utilities to lenders cannot be retrieved from those lenders, the Commission must take whatever steps are necessary to make sure that ratepayers are not being required to compensate utilities for imprudent costs incurred by the Financial Institutions ("FIs") and paid for by utilities through the uncollectibles rider.

The People hereby incorporate all the arguments provided in their pleadings on this issue. AG BOE at 8-10. The Final Order's failure to make findings on the prudence of the terms and conditions of the OBF program prior to its approval of ComEd's OBF program, contrary to the statute, is a violation of Section 16-111.7 of the Public Utilities Act and constitutes reversible error. 220 ILCS 5/10-201(e)(iv)(C). The Commission should grant rehearing on this issue.

3. The Final Order's Conclusions That Financial Risks Associated with ComEd's OBF Programs Should Be Borne By Ratepayers Is Inconsistent with the Commission's Statutory Duty to Establish Just and Reasonable Rates.

The Final Order's conclusions on how best to ensure that OBF program costs are reasonable are premised largely on the existence of the utilities' uncollectibles rider. The uncollectibles rider, authorized by the General Assembly through Section 16-111.8 of the Public Utilities Act, 220 ILCS 5/16-111.8, permits public utilities to charge the difference between its actual uncollectible amounts and the uncollectible amount included in the utility's rates through the imposition of a surcharge on customers' bills.

The Commission relies upon this surcharge to reason that its approval of OBF programs does not require it to take any steps to structure OBF costs to minimize the financial risks to ratepayers, as any excess costs will be collected through the uncollectibles rider. For example, the Final Order's analysis of the weighting issue to be used in the evaluation process states:

> The Commission does take this opportunity to note that we have every expectation that these will be very low interest loans. Pursuant to the statutory scheme, these loans hold no risk for the FIs [Financial Institutions]. For that matter, there is no risk for the Utility either, because any unpaid loans will be recovered by the utilities from ratepayers through their uncollectible riders. Once the interest rate is known, the utility is directed to file that with the Commission.

Order at 33.

The Final Order appears to be premised on the notion that mere "expectations" of low interest rates amount to sufficient oversight, even though they concede that the loans hold "no risk" for either the FIs or the utilities because ratepayers will pay for everything

through the uncollectibles rider. Based on this reasoning, the Commission concludes that they need not do anything to ensure that ComEd's lender evaluations take into account whether or not a lender will seek to pass on reasonable interest rates and other administrative costs.

Similarly, the Final Order concludes that 1) "the credit check process is an FI or lender obligation; therefore, the FI should use its expertise to determine what measures should be taken to limit credit risk." Order at 33; and 2) further concludes that the utilities should not be barred from recovering costs related to filing a security interest because such a prohibition "fails to protect ratepayers." Order at 35. The Order then illogically concludes that it can best protect ratepayers by leaving the decisions regarding underwriting criteria (credit checks) and the methodology regarding the perfection of security interests to the FI (an entity not subject to ICC jurisdiction) and ComEd, because, it offers in a puzzling rationale, "any unpaid loans and any money not recovered through repossession will be charged to ratepayers." Id. If the lenders had to pay for costly credit checks or security interest filings from their own pocket there would be some incentive to keep these costs reasonable. If the FI, however, makes money on these services, the incentives to do more extensive credit checks and filings than are necessary or cost-effective, regardless of whether they provide benefits to the Program are obvious.

Relinquishing control over these issues to parties that will bear no financial responsibility for their decisions does not protect ratepayers. In fact, it accomplishes the opposite, by making ratepayers pay for decisions that at the least will cost ComEd nothing (as program costs are simply passed through the rider) and at worst will provide the FIs with the opportunity to reap a windfall. Furthermore, such a delegation of duty on

the Commission's part improperly relies upon a presumption of reasonableness regarding ComEd's proposal, a presumption which the Illinois Supreme Court has concluded is cause for remand. *People ex rel. Hartigan v. Illinois Commerce Comm'n.*, 510 N.E.2d 865, 871 (1987).

The Final Order puts ratepayer interests at risk by delegating critical cost-containment measures to negotiations between the FIs and the utilities, neither of which is accountable to the ratepayers who must pay for any excessive costs or has any incentive to control OBF program costs. The Commission's delegation of these duties is beyond the jurisdiction of the Commission. 220 ILCS 5/10-201(e)(iv)(B). More significantly, neither the utilities nor the FIs are charged with protecting ratepayer interests, as is the Commission.

The People hereby incorporate all the arguments provided in their pleadings on this issue. AG BOE at 2, 6, 8, and 16. The Final Order violates Section 9-101 of the Public Utilities Act, which requires that all rates for utility service be just and reasonable, 220 ILCS 5/9-101, and as such is reversible error. The Commission should rehear and reconsider its analysis and conclusion on these issues.

4. The Commission's Interpretation of the Public Utilities Act Incorrectly Concludes That The Utilities' Entitlement to Recover All Prudently Incurred Costs Relieves the Commission of Its Duty to Ensure That ComEd's On-Bill Financing Program Is Not Structured To Incur Imprudent Costs.

The Final Order rejects the AG's request to cap ComEd's OBF program fees at a level twice as high as the cap set for administrative costs in other Commission-approved programs. Order at 35. It concludes that because the costs the utilities will seek to recover for OBF programs will be subject to an after-the-fact "prudency review," any

attempt to signal to the utilities what it considers prudent is contrary to the OBF enabling statute. Id.

The Final Order's analysis of the OBF statute leads to the absurd conclusion that because the utilities are entitled to recover their prudently incurred program costs, the Commission has no authority to order the utilities to structure their OBF programs to minimize those costs. The recovery of prudently incurred costs is a well-established principle of ratemaking, not a restriction on Commission oversight with respect to those costs. Where ComEd has indicated that the administration of a program worth $2.5 million in ratepayer benefits will generate costs of $4.177 million, the Commission's duty to take reasonable steps to limit program costs to a "just and reasonable" level is not inconsistent with the authorizing OBF statute.

The Final Order's unreasonably narrow view of its authority under the OBF statute does not comport with traditional principles of statutory construction. Where statutory language is susceptible to more than one interpretation, legislative intent may be ascertain by taking into account "the entire act, its nature, its object, and the consequences resulting from different constructions." *Taddeo v. Board of Trustees of the Illinois Municipal Retirement Fund*, 216 Ill.2d 590, 595 (2005). In this case, it is vastly more reasonable to conclude that the General Assembly expected the Commission to exercise its oversight by imposing standards reflecting its notions of administrative economy and cost-control as part of its approval process than it is to conclude that the legislature expected the Commission to leave all cost-control decisions to the utilities and lending institutions. A statute capable of two interpretations should be given that which is reasonable and which will not produce absurd, unjust, unreasonable or inconvenient

results that the legislature could not have intended. *Collins v. Board of Trustees of the Firemen's Annuity & Benefit Fund of Chicago*, 155 Ill.2d 103, 110 (1993).

Where a statute is capable of several interpretations, courts should look to the statutory objective and the evils sought to be remedied and then arrive at a common-sense construction, selecting that interpretation that leads to a logical result and avoiding that which would be absurd, for the presumption exists that the legislature in passing a statute did not intend absurdity, inconvenience or injustice. *People v. Mullinex*, 125 Ill.App.3d 87, 89 (2d Dist. 1984). The Commission's rejection of any prudency standards as part of its approval process and its refusal to provide any direction to the utilities as to how to extract the most *prudent* terms and conditions from FIs is inconsistent with its duty to make sure that customers' pay only just and reasonable rates for utility service. To insist upon the restrictive reading that the Final Order proposes is to ignore the most reasonable interpretation of the applicable law.

The utilities' entitlement to recover prudently incurred costs, as provided for in Section 16-111.7(f), grants the utilities no greater or lesser recovery than would be the case for any other expense incurred in connection with the provision of utility service. Therefore, the Commission should apply the same standards of reasonableness to its approval of ComEd's OBF program as it would to any other utility proposal. Its failure to do so is a violation of Section 9-101 of the Public Utilities Act, and amounts to reversible error. 220 ILCS 5/10-201(e)(iv)(C), (D). The People hereby incorporate all the arguments provided in their pleadings on this issue. AG Revised Initial Comments at 3-5; AG Reply Comments at 3; and AG BOE at 4-8 The Commission should reconsider and rehear its decision rejecting caps on administrative costs.

CONCLUSION

For the reasons discussed in the People's Application for Rehearing as provided herein, the People respectfully request that the Commission grant rehearing in this docket on this issues as set forth in this pleading.

Respectfully submitted,

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